

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
SAN FRANCISCO BRANCH OFFICE**

**VALLEY HEALTH SYSTEM LLC, d/b/a
DESERT SPRINGS HOSPITAL MEDICAL CENTER, and VALLEY HOSPITAL
MEDICAL CENTER, INC., d/b/a VALLEY
HOSPITAL MEDICAL CENTER**

and

Case Nos.	28-CA-184993
	28-CA-185013
	28-CA-189709
	28-CA-189730
	28-CA-192354
	28-CA-193581
	28-CA-194185
	28-CA-194194
	28-CA-194450
	28-CA-194471
	28-CA-194790
	28-CA-195235
	28-CA-197426
	28-CA-201519

**SERVICE EMPLOYEES INTERNATIONAL UNION,
LOCAL 1107**

*Sara Demirok Esq., and Stephen Kopstein, Esq., for the General Counsel.
Jonathan Cohen, Esq., (Rothner, Segall & Greenstone), for the Charging Party.
Thomas H. Keim, Jr., Esq., and Henry F. Warnock Esq., (Ford Harrison LLP), for the
Respondent.*

DECISION

STATEMENT OF THE CASE

DICKIE MONTEMAYOR, Administrative Law Judge. This case was tried before me over a 9 day period between July 3, 2017, and September 26, 2017, in Las Vegas, Nevada. Charging Party (Union) filed charges on September 23, 2016, December 12, 2016, December 22, 2016, January 6, 2017, February 2, 2017, February 21, 2017, March 2, 2017, March 3, 2017, March 7, 2017, March 14, 2017, March 21, 2017, April 24, 2017, May 18, 2017. October 20, 2014, and April 3, 2015, and an amended charge dated May 5, 2015, alleging violations by

Respondents, Valley Health System LLC, d/b/a Desert Springs Hospital Medical Center, and Valley Hospital Medical Center Inc., d/b/a Valley Hospital Medical Center (Respondents) of Section 8(a) (5) and (1) of the National Labor Relations Act, as amended (the Act). A consolidated complaint was issued on March 7, 2017. Respondents on March 20, 2017, filed an answer to the consolidated complaint denying that they violated the Act. A second consolidated complaint issued on June 5, 2017. Respondents filed an answer on June 19, 2017. At the hearing, counsel for the General Counsel's motion to amend the second consolidated complaint to add other allegations was granted. Similarly, the General Counsel's motion to consolidate 28-CA-201519 was granted. (CG Exh. 1 (ccc), and 1 (fff). Respondents filed an answer on September 6, 2017. Respondents denied that they violated the Act in any respect. I find that Respondents violated the Act regarding some but not all of the allegations alleged.

FINDINGS OF FACT

I. JURISDICTION

The complaints allege, and I find that

1. (a) At all material times, Respondent Desert Springs has been a limited liability company with a place of business in Las Vegas, Nevada, and has been operating a hospital and medical center providing medical care.
- (b) In conducting its operations during the 12-month period ending September 23, 2106, Respondent purchased and received at Respondent Desert Springs facility goods valued in excess of \$50,000 directly from points outside the state of Nevada.
- (c) In conducting its operations during the 12-month period ending September 23, 2106, Respondent Desert derived gross revenues in excess of \$250,000.
- (d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.
- (e) At all material times, Respondent Valley Hospital has been a corporation with a place of business in Las Vegas, Nevada, and has been operating a hospital and medical center providing medical care.
- (f) In conducting its operations during the 12-month period ending September 23, 2106, Respondent purchased and received at Respondent Valley Hospital's facility goods valued in excess of \$50,000 directly from points outside the state of Nevada.
- (g) In conducting its operations during the 12-month period ending September 23, 2106, Respondent Valley Hospital derived gross revenues in excess of \$250,000.
- (h) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act.

2. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

5 3. At all material times, Wayne Cassard held the position of System Director, Human Resources for Respondents and has been a supervisor of Respondents within the meaning of Section 2(11) of the Act and an agent of Respondents within the meaning of Section 2(13) of the Act.

10 4. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Desert Springs within the meaning of Section 2(11) of the Act and agents of Respondent Desert Springs within the meaning of Section 2(13) of the Act:

15	Carol Dugan	-	Director of Nursing
	Ellie McNutt	-	Chief Nursing Officer
	Lori Reynolds	-	Director of Surgical Services

20 5. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent Valley within the meaning of Section 2(11) of the Act and agents of Respondent Valley within the meaning of Section 2(13) of the Act:

25	Shawn Melly	-	Clinical Supervisor
	Kim Crocker	-	Nurse Manager
	Victoria Barnthouse	-	Chief Nursing Officer
	Dana Thorne	-	Human Resource Director

30 6. At all material times, Jeanne Schmid held the position of Staff Vice President of Labor Relations and has been a supervisor of Respondent Valley within the meaning of Section 2(11) of the Act and an agent of Respondent Valley within the meaning of Section 2(13) of the Act.

35 7. At all material times, Wendi Reyes held the position of Progressive Care Unit Director at Corona Regional Medical Center and has been an agent of Respondent Valley within the meaning of Section 2(13) of the Act.

40 8. (a)The following employees of Respondent Desert Springs (the Desert Springs RN Unit) constituted a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act prior to the withdrawal of recognition the validity of which is contested and the subject of this litigation:

45 All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the Act.

(b) On October 3, 1994, the Board certified the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit.

5 (c) Since about October 3, 1994, and at all material times, Respondent Desert Springs has recognized the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from May 1, 2013, to April 30, 2016 (the Desert Springs RN Agreement).

10 (d) At all times since about October 3, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Desert Springs RN Unit.

15 (e) The following employees of Respondent Desert Springs (the Desert Springs Technical Unit) constituted a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act prior to the withdrawal of recognition the validity of which is contested and the subject of this litigation:

20 All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

25 (f) On October 3, 1994, the Board certified the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit.

30 (g) Since about October 3, 1994, and at all material times, Respondent Desert Springs has recognized the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 2013, to May 31, 2016 (the Desert Springs Technical Agreement).

35 (h) At all times since about October 3, 1994, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Desert Springs Technical Unit.

40 (i) The following employees of Respondent Valley (the Valley RN Unit) constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act:

All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

45 (j) On July 12, 1999, the Board certified the Union as the exclusive collective-bargaining representative of the Valley RN Unit.

(k) Since about July 12, 1999, and at all material times, Respondent Valley recognized the Union as the exclusive collective-bargaining representative of the Valley RN Unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which was effective from June 1, 2013, to May 31, 2016 (the Valley RN Agreement, collectively with the Desert Springs RN Agreement and the Desert Springs Technical Agreement, the Agreements).

(l) At all times since about July 12, 1999, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Valley RN Unit.

(m) The Desert Springs RN Agreement and the Desert Springs Technical Agreement each contained the following provision:

The hospital will provide a 2 foot by 4 foot section of a locked glass enclosed bulletin board located in the hospital's cafeteria and a second bulletin board at least 18 inches by 24 inches located in the immediate vicinity of the time clock near the main entrance to the facility for the Union's use in posting of materials related to Union business. The hospital will also provide the Union access to a portion of the bulletin boards in employee break rooms regularly utilized by bargaining unit employees. If existing bulletin boards do not have an area that is at least 18 X 24 inches for Union use, the Union can provide 18 X 24 inch bulletin boards to the hospital, which the hospital will mount for the Union's use. The portion of these existing bulletin boards accessible by the Union will be at least 18 X 24 inches. Any materials posted must be dated and signed by the Union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resource Director, or his/her designee, prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices, will be posted. Employees will not be precluded from accessing that portion of the bulletin boards located in break rooms for posting union related materials as provided above.

(n) The Valley RN Agreement contained the following provision:

(1) Bulletin Boards

The hospital provides an enclosed bulletin board located in the hospital's cafeteria. The hospital will also provide the Union access to a portion of the bulletin boards in employee break rooms regularly utilized by bargaining unit employees. If the existing bulletin boards do not have an area for Union use, the Union can provide bulletin boards to the Hospital, which the Hospital will mount for the Union's use, no larger than 18x24 inches. Any materials being posted must be dated and signed by the Union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resources Administrator or his/her designee, for review, prior to posting. No material which contains personal attacks upon any other member or any other

employee or which is critical of the hospital, its management, or its policies or practices, will be posted. Employees will not be precluded from accessing that portion of the bulletin boards located in break rooms for posting union related materials as provided above.

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(2) New Employee Orientation

The Union will be granted access to new employee orientations for the purpose of a fifteen (15) minute talk regarding the Union and the distribution of a Union information packet to all bargaining unit eligible employees. The packet and orientation discussion shall not contain any material derogatory towards the employer or critical of the services the Employer provides. The Employer will be absent from the room during the Union portion of new employee orientation. The union will provide the Employer with a copy of any written materials used or distributed by the Union during the new employee orientation at least seven (7) days in advance of their use, including any modifications to such materials.

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(o) The Agreements also contained each of the following provisions:

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(1) Union Access

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The hospital shall allow duly authorized representatives of the Union to visit the hospital to ascertain whether a provision of the Agreement is being observed, to assist in adjusting grievances, to confer with individual bargaining unit employees, to participate in committees, and to facilitate patient care and staffing committee studies. Notification of each such visit will be made at least three (3) hours in advance, unless considered an emergency. If the lack of a 3 hour notice is deemed an emergency by the Union, the Union will give an explanation to the hospital as to the reason the notice period could not be given. The hospital will not unreasonably deny such request. Such notification must be specific as to date and timeframe. Upon arrival at the hospital the representative will notify the Human Resources Administrator, or Nursing Supervisor, if such visitation occurs in the evening or on a weekend, of his/her presence. The representatives will also notify the Human Resource Administrator or Nursing Supervisor when he or she departs the facility. The hospital shall issue two permanent badges to the union. Union representatives will wear this badge at all times when conducting union business in the hospital.

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Access to the hospital shall be limited to meeting rooms selected by the hospital for grievance meetings or for the Union Representative's use in meeting with grievants on their nonworking time. In addition, no more than two Union representatives may meet with individual employee in employee break rooms regularly utilized by bargaining unit employees' cafeteria, lobby, and other outdoor break areas. If it is necessary for the Representative to examine a working area of the hospital in order to investigate a grievance, permission to enter and examine the area will be granted by the Human Resources Administrator or Nursing Supervisor, as appropriate. In such cases, a management representative

may accompany the Union Representative at all times while in any working area of the Hospital. There shall be no interference with patient care or the work of any employee. Union business shall not be conducted in hallways or other work areas. The Hospital will provide the Union with reasonable access to a conference room, subject to availability. The above access rights shall be limited to official union business related to the bargaining unit and shall not be used to engage in union organizing activity, solicit, or distribute literature to non-bargaining unit employees.

(2) Enforcement of Access Provisions

If the Union representatives fail to abide by the provisions of this Article, the hospital shall notify the Union and the representative of the date and nature of the violation. If the Union disputes the claim of the violation, at the Union's request, the parties will meet within forty-eight (48) hours to attempt to discuss and resolve the issue in good faith. If after the same representative has been given notice no less than three times of a violation and the violations have not been resolved in good faith to the satisfaction of the Hospital, then the Hospital may notify the Union that the representative is barred from the facility for ten (10) days. Immediately upon barring said representative, the Union may submit the matter to expedited arbitration. The arbitrator will come from the permanent panel as described in Article 21 of this agreement. If the arbitration cannot take place within ten (10) days, the Hospital will permit the representative into the hospital until such time as the arbitrator can make an immediate "bench" ruling on the merits of the complaint; provided, however, that if the representative commits another violation during such time the representative will be barred until a ruling is obtained from an arbitrator. If the arbitrator determines that a Union representative has repeatedly violated the limitations on access, the Arbitrator will fashion an appropriate remedy regarding the limitations or suspension of access rights for the specific Union representative. If the arbitrator determines that Management representatives have repeatedly violated the limitations on access, the arbitrator will fashion an appropriate remedy sufficient to enforce these rights. The parties will exercise due diligence to conduct the arbitration within fourteen (14) or less days from the date of the union request.

The hospital provides an enclosed bulletin board located in the hospital's cafeteria. The hospital will also provide the Union access to a portion of the bulletin boards in employee break rooms regularly utilized by bargaining unit employees. If the existing bulletin boards do not have an area for Union use, the Union can provide bulletin boards to the Hospital, which the Hospital will mount for the Union's use, no larger than 18x24 inches. Any materials being posted must be dated and signed by the Union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resources Administrator or his/her designee, for review, prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices, will be posted. Employees will not be precluded from accessing that

portion of the bulletin boards located in break rooms for posting union related materials as provided above.

- 5 9. About the following dates, Respondents, by Wayne Cassard (Cassard), via email to the Union, informed the Union that bargaining updates provided by the Union to Cassard to be posted to the Union's bulletin boards at Respondents' facilities violated the Agreements and would be removed:

- 10 (1) August 9, 2016;
 (2) October 7, 2016; and
 (3) October 20, 2016.

- 15 10. About October 3, 2016, Respondents, by Cassard, via email to the Union, informed the Union that bargaining updates provided by the Union to Cassard to be posted to the Union's bulletin boards at Respondents' facilities violated the Agreements and instructed the Union not to post the updates.

- 11.(a) About February 19, 2017, Respondent Valley increased the wages of its employees in the Valley RN Unit.

- 20 (b) About March 19, 2017, Respondent Desert Springs increased the wages of its employees in the Desert Springs RN Unit and the Desert Springs Technical Unit.

- 25 (c) Respondents engaged in the conduct described above in paragraphs 6(a) through 6(h), 6(j)(1), and 7(a) through 7(b) without affording the Union an opportunity to bargain with Respondents with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.

- 30 (d) Since about January 31, 2017, the Union has requested, in writing, that Respondent Valley furnish the Union with the following information pertaining to employees in the Valley RN Unit: employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

- 35 (e) Since about January 31, 2017, Respondent Valley failed and refused to furnish the Union with the information requested by it as described above in paragraphs 7(f) and 7(g).

- 40 (f) About February 17, 2017, Respondent Valley withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Valley RN Unit.

- 45 (g) Since about February 17, 2017, Respondent Valley failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Valley RN Unit.

(h) About March 12, 2017, Respondent Desert Springs withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit.

(i) Since about March 12, 2017, Respondent Desert Springs failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Desert Springs RN Unit.

(j) About March 18, 2017, Respondent Desert Springs withdrew its recognition of the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit.

(k) Since about March 18, 2017, Respondent Desert Springs failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of the Desert Springs Technical Unit.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Background

Respondents are two acute care hospitals in Las Vegas – Valley Hospital Medical Center (Valley) and Desert Springs Hospital Medical Center (Desert Springs Springs) (together the “Hospitals” or “Respondents”). They are part of the Valley Health System which owns and operates the hospitals. Universal Health Services (UHS) owns and operates Valley Health System (VHS). Service Employees International Union, Local 1107 (“the Union”) represented employees in three separate bargaining units composed of nurses at Valley (the Valley RN Unit), nurses at Desert Springs (The Desert Springs RN Unit) and technical employees at Desert Springs (the Desert Springs Technical Unit). The Union was certified as the representative of Desert Springs nurses and technical employees in October 1994, and Valley nurses in July 1999. On April 30, 2016, the collective-bargaining agreements (CBAs) for the Desert Springs RN Unit expired, and on May 31, 2016, the CBAs for the Valley RN unit and Desert Springs Technical Unit also expired. Upon the expiration of these agreements the union and the Respondents began successor negotiations for all three bargaining units.

1. Respondents Unilaterally Stop All Dues Deductions

The parties’ expired CBAs contained provisions for dues deductions if in fact employees authorized such. (GC Ex. 12, 13, 14). Nevertheless, on September 4, 2016, Respondents through their counsel Thomas Keim (Keim) sent the Union a letter informing it that the Respondents would cease deductions beginning Friday September 23, 2016. The letter citing Section 302 of the “LMRDA” asserted that the form was “missing explicit language required” by the statute. (Resp. Exh. 22). The letter further noted:

“Section 302(c)(4) provides that employers are authorized to make dues deductions as long as the employees authorization shall not be revocable for a period of more than one year, or beyond the termination of the applicable collective agreement, whichever occurs sooner.” Therefore our conclusion is that

we are not properly authorized to make dues deductions for dues based on the missing language concerning the expiration of the applicable collective agreement. (Resp. Exh. 22).

5 The letter advised that Respondents had, “reviewed a sampling of employee dues authorizations submitted over the last 6 months and none of the authorizations contain the statutorily mandated language and invited the Union to provide it with any authority to establish that the authorization complied with the statutory requirements.” (Resp. Exh. 22).

10 The dues deduction authorization cards referenced in the letter contained the following language:

15 This authorization shall remain in effect and shall be irrevocable unless I revoke it by sending written notice to both the Employer and the Union by registered mail during a period from October 1-15 on each year of the agreement and shall be automatically renewed as an irrevocable check-off from year to year unless revoked as hereinabove provided, irrespective of whether I am a Union member. (Resp. Exh. 1).

20 In keeping with Respondents invitation, the Union on September 15, 2016, responded to Keim’s letter. It began by noting that the “LMRDA” section cited by Respondents did not apply to union dues deduction. Then citing Section 302(c)(4) of the LMRA took the position that, “nothing in Section 302(c)(4) of the LMRA requires that the dues authorization from (sic) expressly state that the dues deduction shall not be revocable for a period of more than one year or beyond the termination date of the applicable collective bargaining agreement, whichever is sooner. Section 302(c)(4) only requires that the employer (Desert Springs and Valley) receive a written assignment for dues and that it not be revocable for a period of more than one year or the term of the collective bargaining agreement.” (Resp. Ex. 23). The union further elaborated on its position by noting that, “Desert Springs and Valley have received the required written assignments signed by bargaining unit employees and they have the language that it is not revocable for a period of more than 1 year. In addition, each of the collective-bargaining agreements provide for the payroll deduction or union dues is applicable “during the life of the Agreement.” (Resp. Exh. 23).

35 On September 19, 2016, Keim responded to the union by reiterating Respondents’ contention that it did not have valid employee assignments to deduct dues. Keim set forth its position that refusal to deduct dues, “based on an invalid authorization is not a unilateral change.” (Resp. Exh. 24). Keim also attached sample dues assignment forms of other labor organizations which it viewed as valid. (Resp. Exh. 24).

40 On September 20, 2016, Dana Thorne sent a letter to all bargaining unit nurses at Valley Hospital advising them that effective September 23, 2016, union dues would not be deducted unless the Hospital received valid dues authorization. (GC Exh. 29). The letter reiterated Keim’s position that the authorizations were invalid stating, “although you may resign from the union at any time, the only time you can stop paying dues is within the once yearly opt out period. Upon review of the SEIU Local 1107 payroll deduction authorization, the Hospital has discovered that the authorization lacks specifically required language from the law.” (GC Exh. 45 29). Attached to the letter was a notice in question and answer format advising employees of :1) the purpose of the notice, 2) why it was happening, and 3) what is a valid authorization for the

deduction of union dues. This notice set forth plainly what Respondents viewed as the defect in the authorizations namely, “the current authorization does not contain the statutorily required language concerning the ability to revoke the authorization at the termination date of the Collective Bargaining Agreement.” (GC Exh. 29 p. 2). On September 20, 2016, Wayne Cassard
 5 sent the identical letter to all Desert Springs employees in both the nursing and technical bargaining units. (GC Exh. 16).

On September 22, 2016, the Union responded by asserting that the Respondents were engaging in a unilateral change and demanded that the employer bargain over the change before
 10 Respondents stop deducting dues. (Resp. Exh. 25).

On September 23, 2016, Respondents ceased deducting dues for all bargaining unit members without engaging in any bargaining with the union over the matter.

15 **a) Respondents Unilateral Action was unlawful.**

Section 302 (c)(4) makes it a crime for an employer to give payments to a union but makes an exception for dues check-off authorizations. The exception is set forth as follows:

20 That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner. 29 USC Section 186(c)(4).

25 Respondents rely on a brief submitted by the General Counsel in *Stewart v. NLRB*, 851 F.3d 21 (D.C. Cir. 2017), to support its position. However, in view of the fact that the court did not openly adopt the referenced position in that case and instead remanded the matter back to the Board, I decline Respondents invitation to rely upon the brief or its rationale in reaching my
 30 conclusions. (Resp. Br. at 66–70).

While some of the questions in the case remain murky, courts have provided some useful guidance in addressing the questions presented. For example, in *Local Joint Executive Board of Las Vegas v. NLRB*, 657 F.3d 865 (9th. Cir. 2011), the court specifically referenced Section 302(c)(4) in finding:
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We see nothing in the NLRA that limits the duration of dues-check offs to the duration of a CBA in the absence of union security. Moreover, other statutory provisions suggest the opposite. For instance, the Labor–Management Relations Act provides that “a written assignment [for dues-check off] shall not be
 40 irrevocable ... beyond the termination date of the applicable collective agreement.” 29 U.S.C. § 186(c)(4). This provision would be surplusage if Congress believed that dues-check off automatically terminated upon the expiration of a CBA. See *Nw. Forest Res. v. Glickman*, 82 F.3d 825, 834 (9th Cir.1996) (“We have long followed the principle that ‘[s]tatutes should not be
 45 construed to make surplusage of any provision.’”) (citation omitted). Accordingly, we conclude that in a right-to-work state, where dues-check off does not exist to implement union security, dues-check off is akin to any other term of

employment that is a mandatory subject of bargaining. Because each affected employee individually requested dues-check off, the Employers' actions in this case were an unlawful termination of a bargained benefit to employees, not merely the cessation of a provision that automatically terminated along with the CBA and union security. The Employers' unilateral termination of dues-check off in this case was thus "in effect a refusal to negotiate ... which reflect[ed] a cast of mind against reaching agreement." Katz, 369 U.S. at 747, 82 S.Ct. 1107. In ceasing dues-check off without bargaining to impasse, the Employers therefore violated section 8(a)(5) of the NLRA.

Worth emphasizing in the court's decision is the important point that dues authorizations are "individually requested." In this case, the evidence is undisputed that no individual requested termination of dues nor is it disputed that the collective-bargaining agreement's language afforded them the right to do so after termination. Respondents merely looked at a sample of authorizations and cancelled all "individually requested" authorizations. Current Board law does not appear to mandate changes in dues check off forms upon expiration nor do they appear to privilege Respondents to unilaterally cease dues deductions that are ambiguous regarding the applicable revocation periods. (Cp. Br. at 49). In this case, as in *Local Joint Executive*, the dues authorizations didn't automatically terminate upon contract expiration but remained valid. The only thing that changed upon expiration is the employees gained a right to terminate dues check off at will. *Big V Supermarkets*, 304 NLRB 952 (1991). A right which they individually, and not the Respondent, acting on their behalf could exercise. As noted by the Board in *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015)¹:

An employer's unilateral cancellation of dues check off when a collective-bargaining agreement expires both undermines the union's status as the employees' collective-bargaining representative and creates administrative hurdles that can undermine employee participation in the collective-bargaining process. Cancellation of dues check off eliminates the employees' existing, voluntarily-chosen mechanism for providing financial support to the union. By definition, it creates a new obstacle to employees who wish to maintain their union membership in good standing. This is significant, because employees who fail to take proactive steps to maintain their membership in the face of this new administrative hurdle lose their right to participate in the union's internal affairs, including matters directly related to the negotiations, such as the choice of a bargaining team, setting bargaining goals, and strike-authorization and contract-ratification votes. Such a change also interferes with the union's ability to focus on bargaining, by forcing it to expend time and resources creating and

¹ *Lincoln Lutheran of Racine* unequivocally overruled *Bethlehem Steel*, 136 NLRB 1500 (1962), remanded on other grounds sub nom. *Shipbuilding v. NLRB*, 320 F.2d 615 (3d Cir. 1963), cert. denied 375 U.S. 984 (1964). In doing so, the Board specifically found that, "requiring employers to honor dues-check off arrangements after contract expiration serves the Act's goal of promoting collective bargaining, consistent with longstanding Board precedent proscribing post contract unilateral changes in terms and conditions of employment." Id. at 188.

implementing an alternate mechanism for dues collection during a critical bargaining period. Finally, an employer that unilaterally cancels dues check off sends a powerful message to employees: namely, that the employer is free to interfere with the financial lifeline between employees and the union they have chosen to represent them. Because unilateral changes to dues check off undermine collective bargaining no less than other unilateral changes, the status quo rule should apply, unless there is some overriding ground for an exception. As the *Katz* Court observed, an employer's unilateral change "will rarely be justified by any reason of substance." 369 U.S. at 747. We see no such reason here.

It is well settled that dues check off relates to wages hours and terms and conditions of employment and is a mandatory subject of bargaining. *Tribune Publishing Co.*, 351 NLRB 196 (2007). It is undisputed that the union demanded that Respondents bargain over the dues cessation, but Respondents refused. Accordingly, I find that this failure to bargain violated Section 8(a)(5) of the Act.

2. The October 11, 2016 Incident in the Desert Springs IMC Break Room

On October 3, 2016, Lanita Troyano, a union official, sent Wayne Cassard, the System Director for Human Resources, an email advising him that the union would post the flyer that was attached to the email. (GC Exh. 18). Cassard responded by advising in part that the flyer, "violates the contract you are not to post at the facilities." (GC Exh. 18). Troyano responded by advising, "we respectfully disagree and object to any removal of the flyers." On October 7, 2016, Troyano sent another email to Casard advising him that the union intended to post the flyer attached to the October 7 email at both Desert Springs and Valley Hospital. (GC. Ex. 19). Cassard responded to the email by stating, "we do not authorize and will remove them." (GC 19). On October 11, 2016, Union Representatives Randall Peters and Amelia Gayton entered the Desert Springs IMC break room for the purpose of posting flyers. The two flyers included the flyer referenced in Troyano's October 7, 2016, email and another related to the union's upcoming fall festival. (Tr. 565). Peters approached the union bulletin board and began posting the flyers. He and Gayton also placed a stack of flyers on the breakroom table. After posting the information, he was approached by Charge Nurse Bill Healy who asked if the flyers were approved. Peters advised that it was in fact, "fully approved." (Tr. 370). Healy thereafter said he would check and left the room. Healy contacted Desert Springs Nursing Director, Carol Dugan complaining that, "they were laying a bunch of stuff on the table." (Tr. 656).

Dugan and Ellie McNutt, the Desert Springs Chief Nursing Officer together went to investigate. Upon arrival, the conversation became heated with Duggan telling Peters and Gayton that there were "too many people in the break room, you shouldn't be in here." Gayton and Peters insisted that they had the right to post flyers. Dugan advised she was going to call security. Gayton called Toyano on her cell phone and put her on speakerphone so that Duggan, "could back down a little bit because she was yelling and screaming." (Tr. 567). Gayton held the phone while Troyano and Duggan spoke. McNutt called Cassard who arrived shortly thereafter with two security guards. Cassard reviewed the two flyers that were on the table. (Tr. 916). Peters and Gayton were asked to step out of the break room and wait in an office next door to the break room while Casard and Dugan discussed the matter. Before leaving Duggan took the

flyers off the bulletin board and collected the ones that were on the table. (Tr. 372). After discussing the matter, Cassard advised Peters and Gayton that they could post the one flyer but not the other. After being told that only one of the flyers had been approved, Peters and Gayton returned to the break room to post the approved flyer and replaced those flyers that had been removed from the table with a copy of the one that was approved. (Tr.569, 570). After the posting of the approved flyer, all of the involved parties left the break room without further incident.

A few weeks later, Cassard on October 25, 2016, sent an email to his supervisors advising supervisors to “take down the attached flyer if the (sic) attempt to post or leave in the break room.” (Resp. Exh. 11). This flyer was different than the flyer Gayton and Peters attempted to post and dealt with the issue of raises. At no time did the Hospitals ever file any grievances related to the union’s literature.

a) Duggan’s Confiscation of Union Literature

The Board has held that credibility issues may be resolved with reference to the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences which may be drawn from the record as a whole. *RC Aluminum Industries*, 343 NLRB 939 fn. 1 (2004). It is important to note regarding the October 11, 2016, incident that the above factual findings involved the analysis and synthesis of multiple conflicting versions of events. The factual findings and the crediting of witness testimony related to the events rests upon the comparison of the various versions of events in an effort to discern based upon the totality of all of the evidence what actually transpired.

It is well established that confiscation of union literature can violate Section 8(a)(1) of the Act. See *Photo Sonics*, 254 NLRB 567 (1981), *New Processes*, 290 NLRB 704 (1988), *NCR Corp.*, 313 NLRB 574 (1993), and *Manor Care of Easton, PA LLC*, 356 NLRB 202 (2010). I find that Dugan, one of the Hospital’s highest level managers, the Director of Nursing, confiscated union literature that she knew was union literature and did so because it concerned union matters. I also find that such conduct was done not for any general housekeeping reasons but for the express purpose of precluding employees from receiving the union’s messaging. Thus, I find that the taking of literature interfered with the employees’ Section 7 rights to be informed of the union’s message and violated Section 8(a)(1) of the Act. See *Ozburn-Hessey Logistics, LLC* 357 NLRB 1632 (2011) *Healthbridge Management, LLC*, 360 NLRB 937 (2014), holding that in removing flyers “Respondent improperly acted to censor what could and could not be told by the union that Represented them.” I also find that in confiscating the literature, Desert Springs failed to bargain with the union over this conduct or the effects of the conduct in violation of Section 8(a)(5) and (1).

b) The Hospitals Prior Approval Requirement and the Removal of Other Union Literature.

The complaint also alleged that bargaining updates were removed on various dates. (GC Exh. 1. (pp)6(a)-(d)). Respondents admit in their answer that on August 9, 2016, October 3, 7, and 20, 2016. Wayne Cassard via email informed the union that bargaining updates provided by the union to Cassard to be posted to the union’s bulletin boards at Respondent’s facilities

violated the CBA and would be removed. (Resp. Answer p. 5). It is also undisputed that on various occasions predating the dates of the allegations in the complaint, the union repeatedly objected to the hospitals requirement of prior approval. In an email on May 24, 2016, Troyano specifically informed Cassard, “the contract does not require your approval of this flyer or any other postings made by the union. The contract only requires that we deliver a signed copy of the material being posted.” (Resp. Ex. 10). At issue is the language in the CBA which proved that, “any materials being posted and signed by the union representative responsible for the posting and a copy of the material being posted will be hand delivered to the Human Resources Administrator prior to posting. No material which contains personal attacks upon any other member or any other employee or which is critical of the hospital, its management, or its policies or practices will be posted.” (Resp. Ex. 2).

c) The Removal of Literature and Prior Approval Requirement Violated the Act.

The contract language did not define the terms “critical of the hospital, its management or its policies or practices.” The contractual language did not on its face reserve the right of the hospital to make the determination of what could be posted on a pre-approval basis or what could be unilaterally removed. It is not difficult to imagine that nearly any pro-union posting could be characterized and viewed as being “critical of the hospital.” In this regard, the application of the terms of the CBA as license for the hospital to approve any posting has the practical result of giving the hospitals unfettered censorship of the union’s message. A telling example of this is the flyer which Cassard in his email of October 25, 2016, advises all supervisors to remove. (Resp. Ex. 12 p. 2). The flyer attached and submitted by Troyano sets forth the union position regarding pay raises. It attempts to communicate the Union’s position that the Union requested a 4 percent pay raise but that the employer was “dragging its feet.” (Resp. Ex. 12 p. 5). Wages and communication about wages is at the heart of the union’s responsibilities in representing employees and unfettered censorship of those types of communications violates the Act. The Board has repeatedly held that having established a bulletin board “the employer is not free to regulate its use selectively or disparately.” *Roll & Hold Warehouse Distribution Corp.* 325 NLRB 41, 51 (1997), see also *NLRB v. Magnavox*, 415 U.S. 322 (1974). Respondent did not otherwise make a showing that the postings that it required pre-approval for on the dates in question were “personal attacks.” I am also not persuaded by Respondents assertions that past practice gave it license to require pre approval when in fact, as noted above, the union objected to such practices. (Resp. Ex. 11). Accordingly, I find that the practice of requiring pre-approval and the denial of the authorization to post union materials on August 9, 2016, October 3, 7, and 20, 2016 tended to have a “chilling and coercive effect” on the exercise of employee rights under Section 7 and violated Section 8(a)(1) of the Act.²

3. Interference with Union/Employee Contact

In an October 25, 2016, email Cassard advised Supervisors that the Union would be visiting break rooms and that:

² General Counsel also alleged in paragraph 6(d) that Lori Reynolds removed materials. The matter was not actively litigated, not specifically referenced in General Counsel’s Brief and there is insufficient factual basis to support the allegations in this paragraph and therefore these allegations are dismissed.

The Union should not have any more than 2 collective bargaining unit employees with them at a time in the break room, cafeteria, lobby and other outdoor break areas. If you see more than 2 collective bargaining employees with the Union, you can disrupt the meeting and ask the employees to return to work or if not on break to return to their unit. Also, please note that no more than 2 Union representatives may meet with individual nurses. (Resp. Exh. 11).

In January of 2017, Dana Thorne, the Human Resource Director of Valley sent similar instructions via email to supervisors advising them that union representatives were not to be talking to more than two nurses at a time. (Tr. 256).

On January 27, 2017, Union Representative Romina Loreto and organizer Gloria Madrid visited Valley Hospital's emergency room break room prior to the 7 p.m. shift change. While there, Loreto began discussing the latest bargaining update with three nurses who were sitting at a table in the break room. When it was time for the shift change briefing both Loreto and Madrid stepped out of the break room and waited. The briefing that evening was conducted by Charge Nurse, Shawn Melley. After the briefing, and as Loreto and Madrid were leaving, Melley approached them, identified himself, asked them their identities and whether they were affiliated with the union. The both identified themselves and acknowledged they were in the break room on behalf of the union. Melley then advised them both that they were only allowed in certain places in the hospital and could only talk to one or two nurses at a time. (Tr. 281). Loreto disputed this asserting that she was entitled to talk to more than two pursuant to the terms of the collective-bargaining agreement.

Article 14 of, Section C of the CBA provided:

The hospital shall allow duly authorized representative of the Union to visit the hospital to ascertain whether a provision of the Agreement is being observed, to assist in adjusting grievances, to confer with individual bargaining unit employees, to participate in committees and to facilitate patient care and staffing committee studies. (GC Exh. 12, p.22).

a) Employer Interference Violated the Act

Nowhere in the CBA was there a restriction regarding numbers of employees who could be spoken to at any particular time. There is no dispute that not only did Melley advise union officials that they could only talk to up to two nurses but Cassard openly directed supervisors to "disrupt" union employee gatherings of more than two bargaining unit employees. (Resp. Exh. 12). This openly stated policy of disruption tended to interfere with the contractually granted right of access of Article 14. It was also a unilateral change of a material condition of employment, and tended to interfere with the representational process. See *Frontier Hotel and Casino*, 309 NLRB 761 (1992), also finding similar conduct, "a direct coercion and restraint of employees who were engaging in the union activity of conversing with their bargaining representative." Applying the reasoning and rationale of *Frontier Hotel*, I find that Valley unlawfully restricted union representative access to bargaining unit members in violation of Sections 8(a)(5) and (1) Act.

4. The February 2, 2017 Orientation

On February 2, 2017, Union Representatives Loretto and Natalie Hernandez showed up at Valley Hospital to participate in a union presentation for new employees. They arrived around noon but were told upon arrival by Nursing Project Manager, Kimberly Crocker that the meeting time had been changed and to return at between 2 and 2:30 p.m. The union presentations had previously been held at 12 p.m. but all including the February 2, 2017 presentation were changed to 2:15 p.m. by Dana Thorne in a series of emails sent to Troyano. (Resp. Exh. 13, 14). Around 2:10 p.m. Loretto and Hernandez noticed approximately 10 people exiting.³ They approached those exiting to inquire whether they were on lunch break or whether the orientation was over. They were told that the orientation was finished. Loretto thereafter approached Crocker to question her as to why they were told to return at 2:15 when the orientation finished earlier. (Tr. 284, 814). Crocker responded by telling Loretto that there were two nurses in the orientation and they didn't want to wait around until for the presentation. She also indicated that there wasn't anything she could do about it. (Tr. 285).

Article 14 provided in relevant part that "the Union would be granted access to new employee orientations for the purpose of a fifteen (15) minute talk regarding the Union and the distribution of union information packet to all bargaining unit eligible employees." (GC Exh. 12).

a) The Failure to Grant Union Access to new Employees Violated the Act.

There is a degree of discourtesy in a person knowing individuals are waiting to present to employees and purposefully terminating a meeting before their return (presumably in the hopes that the union officials would arrive to an empty room). What Crocker didn't factor in her calculation apparently is that the union officials would wait the entire time nearby within view of the meeting. A similar discourtesy is evident in Crocker walking out of the meeting without, on her own initiative, seeking out the union officials. Instead they had to approach other employees, and eventually her, to understand what was transpiring. Lastly, knowing that the union officials had been standing by waiting and without at least giving the union officials an opportunity to introduce themselves to employees is evidence that her actions of dismissing the employees without giving the union officials any opportunity to even introduce themselves was intentional. Although Crocker testified that she was told by the employees that they didn't want to stay, I find that dismissing the nurses before the Union had an opportunity to address them was not in compliance with the hospitals obligations under Article 14 of the CBA. Given the level of discourtesy in Crocker's actions, I do not credit her testimony that new nurses didn't want to stay as it appeared to be a convenient and self-serving attempt to justify her planned and seemingly purposeful attempt to thwart the union's contractual right to address the employees and violated Sections 8(a)5 and (1) of the Act.

³ There was some discrepancy in the testimony of all three regarding the actual time the meeting ended. There is no dispute however regarding the more important fact that the meeting terminated prior to the time Crocker advised the union officials to return.

5. The February 15, 2017 2-East Break Room Incident

On February 15, 2018, Union Representative Hernandez and union volunteer and former employee Katrina Alvarez stopped by the 2-East break room to distribute flyers. While Hernandez was posting flyers, Alvarez struck up a conversation with three nurses that were present. Also present were other non-bargaining unit members who were close by and may have been listening to the conversation. Dugan walked past the break room recognized Alvarez opened the door and said, “excuse me there are unrepresented employees in the room. And I request that you wait until they leave—finish their break and leave.” (Tr. 651).

Dugan testified that she saw Alvarez talking to nonunion members and as she described “holding court.” I however don’t credit her testimony. It is logically inconsistent that she would have seen the conversation but only mentioned that they were present in the room in her attempt to break the meeting up instead of confronting Alvarez directly and stating that she was not allowed to speak with unrepresented employees. Nevertheless, Alvarez responded that they had the right to speak with union members. After hearing Dugan, two of the nurses involved in the union conversation abruptly left the room. (Tr. 326, 346, 348). Dugan responded by telling them to get out and threatened to call security on them. (Tr. 326, 346). Neither Alvarez nor Hernandez left and continued speaking with a nurse who remained in the break room. (Tr. 327, 346).

a) Duggan’s Actions Violated the Act

The CBA contained a provision that limited access to union official business and precluded the union from efforts to “engage in union organizing activity, solicit, or distribute literature to non-bargaining unit employees.” (GC Exh. 13). The CBA however did not specifically limit conversations with bargaining unit members in the break room when other non-bargaining unit members happen to be present. Respondent’s implied assertion that since the conversation was limited to less than a minute and because no employee was “barred” there was no inherent harm in Dugan’s actions. I disagree. The actions of Dugan had a real time chilling effect on the exercise of Section 7 rights of the employees who abruptly left. Moreover, Dugan’s imposing of this unilateral change and restriction violated Section 8(a)(5) and (1) of the Act.

6. The January 31, 2017 Union Request for Information

On January 31, 2017, the union sent a request for information to the Respondents asking for the following information:

An updated list of all current employees in each bargaining unit at Desert Springs Hospital and Valley Medical Center. The list must contain the employee job classification, name, address, telephone number(s), email or other electronic address and the department where the employee works. Please provide this updated information no later than February 6, 2017. (GC Exh. 21).

On February 6, 2017, Respondents counsel Keim responded by indicating that:

The requests are similar to requests made by the Union on December 7, 2016, requesting a response by December 30, 2016. Wayne Cassard timely responded to those requests. The January 31, 2017, requests seek additional information including employees' cell telephone numbers and personal e-mail addresses. Of greater concern is the Union's requested date for providing the information which is February 6, 2017. The Hospitals will work on providing the information, but will not meet the deadline which we believe is unreasonable. (GC Exh. 34)

On February 6, 2017, 36 minutes after receiving Keim's response, the union asked, "what date do you propose to get us the requested information?" (GC Ex. 34). Keim did not respond to the union's inquiry. On February 17, 2017, Valley withdrew recognition of the union. At no time prior to the withdrawal did Valley provide the requested information.

a) The Duty to Provide Information

If an employer fails to provide the union with requested information that is relevant to the union's proper performance of its collective-bargaining obligations, it violates Section 8(a)(5) and (1) of the Act. *Leland Stanford Junior University & Service Employees Local No. 715, SEIU*, 262 NLRB 136, 138 (1982) (citing *Detroit Edison Co. v. NLRB*, 440 U.S. 301, 303 (1979)). An employer is obligated under the Act to provide requested information that is relevant to the union's responsibilities regarding both administration and enforcement of an existing collective-bargaining agreement. *NLRB v. Truitt Mfg. Co.*, 351 U.S. 149, 152–153 (1956). The relevance of any request is ascertained by analyzing the information request against a liberal "discovery" standard of relevance as distinguished from the standard of relevance in trial proceedings. *NLRB v. Acme Industrial Co.*, 385 U.S. 432 fn. 6 (1967). The discovery standard for relevance is construed "broadly to encompass any matter that bears on or that reasonably could lead to other matter[s] that could bear on, any issue..." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978); *Hickman v. Taylor*, 329 U.S. 495 (1947). The information doesn't have to be dispositive of the issues between the parties; it only has to have some bearing on it. Thus, an employer must furnish information that is of even probable or potential relevance to the union's duties. *Pfizer Inc.*, 268 NLRB 916 (1984); *Conrock Co.*, 263 NLRB 1293, 1294 (1982).

b) Relevance

The evidence of record establishes, and I find, that the contact information sought by the union including the employee job classification, name, address, telephone number(s), email or other electronic address and the department where the employee works are basic, simple and fundamentally related to the performance of the union's statutory duties and thus presumptively relevant. *Harco Laboratories, Inc.*, 271 NLRB 1397 (1984).

c) Respondent's Contentions

There is no dispute that Valley failed to furnish the information sought. This is true despite the fact that the information was readily available to it and could have been compiled with relative ease. The Respondent's duty was to provide the information sought yet it chose to

simply ignore the union's request. This is borne out in Keim's failure to respond to the union's inquiry regarding when it could expect the information and the failure to engage internal hospital processes to comply with the request. (GC Exh. 34) (Tr. 694). Where simple, basic and presumptively relevant information is requested, the employer is required to furnish it in a timely fashion. *U.S. Postal Service*, 332 NLRB 635 (2000), *Capitol Steel and Iron Co.*, 317 NLRB 809 (1995). Simply ignoring or "slow walking" the union's request at the critical time when a decertification effort was underway violated the employers duty to engage in "a reasonable good-faith effort to respond to the request as promptly as circumstances allow." *Goodlife Beverage Co.*, 312 NLRB 1060, 1062 fn. 9 (1993). The duty to act in good faith requires "an honest effort to provide whatever information is required." *Decker Coal Co.*, 301 NLRB 729, 740 (1991). The Respondent's "slow walking" and or simply ignoring the union's request for 17 days was a breach of its duty. In view of the fact that I have found the withdrawal of recognition unlawful, Respondent's is precluded from reliance upon such to support its contention that it had no duty to provide the information. See *Renal Care of Buffalo Inc.* 347 NLRB 1284 (2006). It is undisputed that Respondent failed to provide the requested information and in doing so its actions were in direct contravention of and in violation of Sections 8(a)(5) and (1) of the Act.

7. The Mandatory Meeting With Komeda

On or about January 27, and 31, 2017, petitions to decertify the Union as the representative of the Valley RN Unit were filed with the board. *Valley Hospital Medical Center Inc.*, 28-RD-191978, 28-RD-192131. After the petitions were filed, Staff Vice President of Labor Relations Jeanne Schmid, and Wendi Reyes, Progressive Care Unit Director at Corona Regional Medical Center began conducting mandatory meetings with Valley nurses. The meetings were designated as "Act Training" with the goal of training to convince employees to vote against the union, communicate the hospital's "side," and to have employees make an "informed decision." (Tr. 747). Or as more subtly framed that the hospital "would prefer...welcome the opportunity to have a direct relationship..." (Tr. 748).⁴

Sue Komeda, a Valley RN was, in late July or early February of 2017, notified by her manager Johnny Candari, that she was required to attend a meeting. When she arrived, there were 10 to 11 other nurses from different floors already at the meeting. Presenting at the meeting were Schmidt and Reyes. The duration of the meeting was approximately 1 ½ hours long. Various topics were covered in the meeting and described in relevant parts by Komeda as follows:

Q - Okay. Now, I want to talk about what took place during this meeting. And you mentioned that Ms. Schmidt was conducting the meeting. Could you walk us through what it was that she was -- that she talked about?

A -Well, she talked about how they -- she talked about how the administration did not want the Union in the Hospital anymore and that the bargaining was going on and that

⁴ When the meetings were conducted, the Hospital's goal was to speak with all eligible voters and to that end the attendees were required to sign an attendance sheet. The General Counsel via subpoena requested the sign in sheets but Respondent failed to provide the records. Respondent admits that the sign in sheets existed but that after a search for them was not able to locate them. (Tr. 1115-1116). Counsel for the General Counsel requested that an adverse inference be drawn based upon the failure to produce the documents.

bargaining would go on and on and on and that while bargaining was going on, they would stretch it out to a long length of time and during that time, we would not get any raises. And that's about all I recall. (Tr. 525).

Q - Okay. So when Ms. Schmidt was talking about the bargaining, could you tell us -- run through, to the best you can recall, exactly what she was saying about the bargaining between the Hospital and SEIU?

A - She had an erasable board and she drew a line and it said -- and the line, she wrote next to -- or on the line, "Impasse." And then she wrote arrows up and down and she was saying, you know, that during all bargaining that -- how bargaining usually goes is that one set -- one side gives their -- what they want and the other side gives what they want and then they -- then they talk about it until, you know, they decide on -- on what it is, well, that the administration or the UHS side of it was not going to give anything unless they got something and they certainly weren't going to give anything unless they got everything that they wanted, and then they would extend this bargaining. She gave an example of a hospital in Philadelphia where they bargained and bargained and bargained for years and no one was getting any raises during all that bargaining and they would just bargain until impasse and they would eventually get what they wanted, which was to have no union. (Tr. 526)

Q - Did she say anything about the market raises -- did she say anything else that you recall about that?

A - Just that if we didn't have a union, we would get them.

Q - Okay. And at the time were you -- did you have market value raises?

A - No. (Tr. 529).

Q - Okay. And what was it that you asked? What was your question?

A - Well, I -- I asked her -- what I really asked her was what the point of the whole meeting was.

Q - And did she respond?

A - Was to inform us on how to get rid of the Union and to --

Q - Okay.

A - inform us what benefits we would receive from getting rid of the Union. (Tr. 532).

Referring to Wedi Reyes, she testified that she didn't speak very much but that she did offer some commentary as follows:

Well, she talked about that her -- the administration at her hospital wasn't doing a very good job of helping the employees out. And so what the hospital employees did was voted in a union. But then once the union got in there, they weren't happy with the union. So she had told them that they could vote the union out, and they did. So they voted the union out and then they got a better administration because better administrators only go to nonunion hospital -- yeah, only go to nonunion hospitals, that union hospitals were restricted in getting good administrators because those administrators could not do what they wanted to do. They had to go through the union. (Tr. 530).

a) Valley's Mandatory Captive Audience Meeting Was Coercive

At the outset it is important to set forth that I credit the testimony of Komeda as being truthful. I do so for a number of reasons. First, I had the opportunity to personally observe her testimony and although she did not record or videotape the meeting, she attempted to convey to what appeared to be the best of her ability the general ideas that were communicated to her in the meeting. I also credit her testimony because much of which she testified to was not directly controverted in the record as Schmid did not directly testify about the specific meeting in issue. Her testimony about what was generally said in "Act" meetings is insufficient to rebut Komeda's testimony about what was said at that particular meeting. As noted by the General Counsel in their brief, Schmid never directly denied telling employees at the Komeda meeting that they would receive wage increase if they did not have a union, that Valley wouldn't give up anything in bargaining unless it got everything it wanted, the hospital would drag out bargaining until the union relented, and that nonunion hospitals attract better administrators. (GC Br. 22–23). Thirdly, Valley's destruction of sign in sheets and the failure of Reyes to testify both warrant imposition of the adverse inference rule. The decision to draw an adverse inference lies within the sound discretion of the trier of fact. *Underwriters Laboratories Inc. v. NLRB*, 147 F.3d 1048, 1054 (9th Cir. 1998). In this instance, it is appropriate because without the information in the sign in sheets, the General Counsel was denied the ability to call other employees to testify not only about the Komeda meeting but other so called "Act" meetings. Regarding the failure of Reyes to testify, when a party fails to call a witness who may reasonably be assumed to be favorably disposed to the party, an adverse inference may be drawn regarding any factual question on which the witness is likely to have knowledge. In particular, it may be inferred that the witness, if called, would have testified adversely to the party on that issue. Valley did not provide any explanation as to why Reyes did not testify, did not show that she was unavailable, and did not demonstrate other efforts to have her testify. Thus, I infer that if Reyes (or other witnesses on the sign in sheets) would have been called, their truthful version of events would have supported Komeda's version. See *Flexsteel Industries*, 316 NLRB 745, 758 (1995) (failure to examine a favorable witness regarding factual issue upon which that witness would likely have knowledge gives rise to the "strongest possible adverse inference" regarding such fact); *Martin Luther King Sr. Nursing Center*, 231 NLRB 15, 15 fn. 1 (1977) (adverse inference appropriate where no explanation as to why supervisors did not testify); accord *Graves v. United States*, 150 U.S. 118, 121 (1893) ("if a party has it peculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the presumption that the testimony, if produced, would be unfavorable").

i) Schmid's Promise of a Wage Increase Violated the Act.

An employer violates Section 8(a) (1) when it promises, either explicitly or impliedly, improved benefits contingent on employees giving up union representation. See *Bakersfield Memorial Hospital*, 315 NLRB 596 (1994). Similarly, an employer violates Section 8(a)(1) when it threatens that benefits will not be available if the employees are represented by a union. See *Libbey-Owens-Ford Co.*, 285 NLRB 673 (1987). In this context, the burden is upon the General Counsel to establish by a preponderance of the evidence the existence of an unlawful promise of benefits or threats of the unavailability of benefits. *Wild Oats Markets*, 339 NLRB 81 (2003).

I find, relying on Komoda's credited testimony, that the General Counsel has met its burden. Schmid's statements, in essence that Valley would not provide any raises in a bargaining context as well as the clear inference that the only way to get a raise would be to get rid of the union on their face, fall within the realm of what the Board has found to be unlawful in both *Bakersfield Memorial Hospital* and *Libbey Owens Ford*. I therefore find that the promised wage increase violated Section 8(a)(1) of the Act.

ii) Schmid's Expression of Futility Violated the Act

An employer violates the Section 8(a)(1) of the Act if it conveys to employees the futility of union representation. *E.I. DuPont de Nemours*, 263 NLRB 159, (1982), *Kona 60 Minute Photo*, 277 NLRB 867 (1985), *Overnite Transportation Corp.*, 296 NLRB 669 (1989), *Hi Tech Cable Corp.*, 318 NLRB 280 (1995). I find that a reasonable employee hearing Schmid's suggestion that the hospital wasn't going to give anything unless they got everything that they wanted, and then they would extend this bargaining would conclude that representation was not only futile but would result in potentially never receiving any wage increase if represented by the union. The statements also in their very essence communicate what amounts to an underlying willingness or threat to bargain in bad faith. Accordingly, I conclude that Schmid's expression of futility violated Section 8(a)(1) of the Act.

iii) Reyes' Statements Also Violated the Act

Reyes' statements conveyed the benefits of decertification including the view that hospitals with unions resulted in substandard administrators and by implication inferior working conditions. Her statements must be viewed in context of Schmid's other unlawful statements. Viewed from this perspective, her comments had the intended effect of discouraging the employees from supporting the union by directly promising better future conditions of employment specifically better administrators "because better administrators only go to nonunion hospital" without unions and thus violated Section 8(a) (1) of the Act.

8. Valley Withdraws Recognition from the Union

While the decertification effort was ongoing a Desert Springs hospital RN set up two online forms on the website "Typeform.com." One was set up for a Valley RNs and the other for Desert Springs. She also created flyers with "QR" codes and a Facebook page. Each form allowed for the entry of name, email address, telephone number, employer name, and a "yes/no confirmation to indicate whether the employee wished to be represented by the SEIU Local 1107. (Tr. 858-862, 865), (Resp. Exh. 28, 33). The forms did not include any form of electronic signature or other security feature to ensure that the person filling out the form was in fact the person whose name appeared on the form. After forms were completed and submitted, a copy was automatically sent to the email address richel.borg@gmail.com. Despite the email notifications there was no way to determine whether an email was in fact sent by the person whose name appeared on the form. Farese testified as follows:

Q - And you don't have any personal familiarity with these emails prior to -- like the individual email addresses prior to you receiving these, correct?

A - No.

Q - So, for example, if I asked you John Arciaga's email address, could you tell me what his personal email address is?

A - No.

5 Q - So you don't know who sent these, correct?

A - Correct.

Q - You just know the name that's on each of these?

A - Correct.

10 Q - It could have been one person sending all of them and generating different email addresses, correct?

A - In theory.

Q - But you have no way of knowing?

A - Nope.⁵

15 On February 17, 2017, Chief Nursing Officer of Valley Victoria Barnhouse met with Employees Richel Burog and Jennifer Yant. The meeting was to communicate with Barnhouse their belief that enough signatures and cards had been collected to support decertification. They handed over documents to her which consisted of photocopies of cards along with original inked signatures and 38 copies of the Typeform emails. (Resp. Exh. 27, 28). Barnhouse took
20 possession of the materials and never asked any questions about the emails, visited the website Typeform.com, nor did she inquire or know for sure whether any of the emails were actually submitted by the employees whose names appeared on the forms. (Tr. 797, 798). In this regard she testified as follows:

25 Q - But let's take, for example, the first one here. Respondent's 28, the very first page. There's a name on here. I might say it wrong --

A - Yes, ma'am.

Q - but it's Irene Dumlao (phonetic) Dumla (phonetic); is that right?

A - I would say so, yes.

30 Q - Okay. You don't -- when you looked at these, and even sitting here today, you don't know if Irene Dumlao had anything to do with this email that went to Ms. Burog; is that right?

A - That's correct.

Q - And that would be the same for all of these documents in here, right?

35 A - Yes. (Tr. 798).

⁵ The General Counsel and Charging Party vigorously objected to the hearsay content of the emails. The emails were admitted over counsel's objection with the proviso that whether or not every single one of the individuals who are purported employees of the hospital filled out the form was a matter that had yet to be determined as part and parcel of the ALJ authentication process. (Tr. 866–869). While there is no dispute that Farese received emails, there is no competent proof to contradict her own assertion that she could not determine who generated the forms or alternatively whether one person generated all of the forms. Regardless of whether the emails contained hearsay, the hospitals nevertheless relied upon them in their decision to withdraw recognition. With the benefit of a complete record, and the completion of the ALJ review process, it is clear that whether couched in terms of inadmissible hearsay or in terms of a failure of proof, the evidence of record clearly established that the emails are insufficient evidence from which to conclude that Respondents met their burden to establish that the emails were actually sent by the employees persons whose information appeared on them.

After receiving the materials Barnhouse, Schmid and Keim met in a conference room to sort count and alphabetize the materials. They then delivered the materials to Thorne who commissioned Nursing Project Manager Crocker and Annette Litton to split the cards between them and count them and compare signatures to signatures in employee personnel files. (Tr. 816, 832, 835). Neither has any special handwriting comparison expertise or training nor were either personally familiar with any of the employee signatures. (Tr. 825, 826, 844, 845). Each was given a list to check off against that purported to show who was employed at the time. (Resp. Ex. 29, 31). Litton concluded that there were 132 that could be verified. Crawford in her count concluded that there were 154 cards which could be verified. (Tr. 822). She testified that she identified two that could not be verified and asked Keim and Litton to review the cards but did not recall whether they were included in the count or not after the others reviewed them. (Tr. 269, 272). She (Tr. 822, 825), (Resp. Exh. 30). Crocker and Litton counted the cards twice filled out the count sheet which was witnessed by Keim.

Keim counted the emails. Of the emails counted only 30 were counted to establish loss of majority status because there were duplicate cards. (Tr. 1049). As long as the phone number along with other information on the form but **not** the email address matched; or if the email address matched that of the employee, the Typeform email was counted.⁶ (Tr. 1050, 1093).

According to the list that was printed, there were 534 employees in the Valley Unit. However Keim used the figure of 533 after getting word that an employee had been terminated that day. (Tr. 1073)(Resp. Exh. 31). Despite the fact that the employee had been terminated and the number was subtracted from the total number of employees, it appears that the terminated employee was still counted as an employee who no longer wished to be represented by the Union. (Resp. Exh. 21, at 124, 27(a), at K1). Later that same day Respondent sent a letter to the Union notifying it of withdrawal of recognition, and notified RN's of such through the distribution of a flyer.

a) Valley Relied Upon Electronic Submissions That Did Not Establish Evidence of Actual Loss of Majority Support by a Preponderance of the Evidence.

In *Levitz Furniture Co.*, 333 NLRB 717, 725 (2001), the Board articulated the current standard regarding withdrawal of recognition. In *Levitz*, the Board held that “an employer may rebut the continuing presumption of an incumbent union's majority status, and unilaterally withdraw recognition, only on a showing that the union has, in fact, lost the support of a majority of the employees in the bargaining unit.” *Levitz*, 333 NLRB at 725. In so doing, the Board emphasized that an employer “withdraws recognition at its peril.” *Id.* The employer bears the burden of proving by a preponderance of the evidence that the union had, in fact, lost majority support at the time of the withdrawal of recognition. If the employer fails, it will not have rebutted the presumption of majority status, and its withdrawal of recognition will violate Section 8(a)(5) of the Act. Under *Levitz*, an honest but mistaken belief that a union has lost majority support will not insulate a Respondent from liability.

⁶ Schmid testified that emails were counted by simply comparing the name on the email with the name on the employee list provided by Thorne. (Tr. 74–76).

In an attempt to meet its burden, Respondent relies upon email submissions that were delivered to it. There are many facts that are in dispute in this case however one undisputed fact stands out in the voluminous record. The undisputed fact is that there is no real evidence to establish that the emails that were counted were in fact submitted by the employees listed on the emails. The emails lacked electronic signatures and although Respondent made good faith efforts to verify by phone number or email, the undisputed evidence of record is that some or all of them could have been prepared by someone other than the person listed on the email. It is undisputed that presumably any person or persons with an employee roster (or and employee sign in sheet like those that were not produced) could have produced the email submissions. The Board has sanctioned the use of electronic communications in some instances (see GC-Memo 15-08) however; it has imposed strict requirements to ensure the integrity of the signatures requiring for example a written declaration or confirmation. (See GC Memo 15-08 (A)(2-3). No such safeguards were present here. There were also irregularities that were identified in the electronic submissions themselves. For example, approximately 55 of the email submissions for all the units did not match email addresses of employees in the hospital records or there was no email address in hospital records to compare to. (See GC Br. 75–77). Because of the failure to establish that the persons whose name appeared on the emails, actually were the same person that sent them, I find that Respondent failed to meet its burden to show actual loss of majority. In view of Respondent’s failure to meet its burden regarding withdrawal of recognition, I find that Respondent violated Section (8)(a)(5) and (1) of the Act.⁷

b) Valley Relied on Signatures Which Could Not Within a Reasonable Degree of Certainty be Authenticated

In accordance with FRE 901(b)(3), the Board has authorized the Administrative Law Judge to review signatures on cards in order to make some assessment regarding their genuineness and authenticity. See *Acme Bus Corp.*, 357 NLRB 902 (2011), *Parts Depot Inc.*, 332 NLRB 670 (2000) *enfd.* 24 Fed. Appx 1 (D.C. Cir. 2001). The General Counsel challenged 52 of the signatures that Respondent Valley relied upon in support of its withdrawal of recognition. (GC Br. at 69–71). I have carefully reviewed the signatures and compared the cards submitted to the signatures that appear in Respondent’s personnel records. (Resp. Exh. 27 and 21). I agree in part with the General Counsel that some cards could not with any reasonable degree of certainty be determined to be genuine or authentic because of the variation between the signature on the card and that found in the personnel records. However, unlike the General Counsel, I do not find all 52 cards met this criteria. I find only the following cards fell into this category: Violeta Aguirre, James Aldridge, Meredith Barker, Lakeesha Blair, Arthur Catubaya, Savani Chettiar, Honk Kong Connolly, Afifa Dastagir, Lori Davis, Leoncio Del Castillo, Leslie Echols, Christine Edano, Michelle Elftman, Alfred Fonacier, Myung Han, Era Irlandes, Lisa Laurence, Jessica Mackey, Nicole McKay, Easterlyn Mendoza, Edward Nyame, Hayley Pelz, Lucinda Peterson, Ebony Towels, Paula Williams, and Carissa Young. (Resp. Exh. 27 A1, B1, B2, C4, C6, D2, D3, E1, F1, H1, I1, L1, M1, M3, M5, N3, P3, T2, W1, Y1). Accordingly, these 26 cards should not be counted for purposes of showing actual loss of majority. In addition, Valley relied upon a card for Timothy Mansfield that was dated after the withdrawal of

⁷ Using Respondent’s own figures regarding unit size and number of emails it counted, even (assuming for the sake of argument that all other cards were valid) once the emails are subtracted the count falls below the 267 required to show loss of majority support.

recognition and should also not be counted. (Resp. Exh. 27 M1). The inescapable conclusion to be drawn from this evidence is that independent of the email submissions, if the above questionable cards are subtracted from the total, Respondent failed to meet its burden regarding withdrawal of recognition.

9. Valley Hospital's Wage Increase

On February 23, 2017, Valley sent a letter to all Hospital Medical Center Staff RN's advising them of an immediate wage adjustment. (GC Exh. 11). The pay adjustment was made effective February 19, 2017. The letter notified that each RN would "move to the level commensurate with his/her years of experience on the Valley Health system nonunion pay scale. It further provided that "every RN will receive something; the range of the adjustments are from 2%-9% which were not based upon performance but were "market adjustments" to put nurses "on the VHS RN non-union market scale." The letter further noted that "as with all VHS non-union hospitals, nurses will be eligible for a merit increase in July of 2017 ranging from 2.5% to 3.75% and RNs would be eligible for any other market adjustments implemented by Valley." (GC Exh. 11).

a) Unilateral Changes to Wages

Unilateral modification of wages or other mandatory subjects of bargaining can constitute a per se violation of Section 8(a)(5). In view of the fact that I have found that Valley's withdrawal of recognition was unlawful, it was not privileged to take unilateral action regarding wages (one of the most material and substantial subjects of bargaining) and in doing so violated Section 8(a)(5) of the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016) enf'd. 871 F.3d. 811, 825 fn. 4 (2017), see also *Narricort Industries, L.P.*, 353 NLRB 775, 776 fn. 11 (2009).

10. Decertification Efforts at Desert Springs - Mark Smith an RN from Corona Regional Medical Center in Corona, California Permitted Inside of Hospital to Solicit Decertification

In March of 2017, Mark Smith, although not an employee of Desert Springs Hospital was authorized by Desert Springs to solicit and collect decertification cards from employees. His stated purpose in going to Desert Springs was to "get rid of the union." (Tr. 498). He stayed in Las Vegas for 7 days and coordinated with Courtney Farese, who provided him with literature and a portable table. (Tr. 508). During his visit, he set up a portable table inside the hospital and stayed there during the shift changes. (GC Exh. 6). In between shift changes, he would set up in the cafeteria. The portable table had a sign that said, "Stop Unions" or "No Unions." (Tr. 507). At the time of his activities, Valley Hospital had in place a non-solicitation policy that provided as follows:

B. Non Employees:

1. Solicitation by non-employees or distribution of non-Facility materials or literature by non-employees on Facility owned or leased property is prohibited at all times. The CEO, or his/her designee, must approve all

fundraisers, hospital sponsored events, and the solicitation/distribution of literature by non-employees in the workplace.

2. Non-employees found soliciting and/or distributing literature on Facility property will be asked to leave the premises and may be charged with trespassing. (GC Exh. 22).

On March 6, 2017, Megan Bell, a Desert Springs employee arrived at the cafeteria to have lunch with Union Representative John Archer. (Tr. 442). While waiting for Archer to arrive she noticed Smith seated at his portable table who was dressed in a nurse uniform with a Corona Hospital ID badge. (Tr. 442). She approached Smith and asked what he was doing. He indicated that he was there "to get the union out of the hospital" and that he specifically told her "I'm here for UHS." (Tr. 443). UHS referring to United Health Services the parent company of Desert Springs. After approaching Smith, she sat back down to wait for Archer to arrive. Shortly after Archer arrived, he approached Smith and they began talking. Smith left his portable table and sat at a cafeteria table. Archer followed him moving to the same table where Smith was seated. (Tr. 445). Smith became irritated by Archer, left the cafeteria and called Farese on his cell phone and told her that he was being harassed. He returned with Schmid, CNO McNutt, Dugan and Security Guard Hank Castro. They approached Archer who credibly testified that he was seated at the cafeteria table and the following colloquy ensued:

A - They walked up to the edge of the table and they -- Jeanne Schmid looked at me and says, you cannot sit there.

Q - And what happened after she told you that?

A - I asked her, I figured it was open seating and I should be able to sit there.

Q - And what happened after you said that?

A - I said, let's see, I asked -- I got up and I went over to the Union table and I got my notepad.

Q - And what happened after you got your notepad?

A - I asked her if she knew what Mark Smith was doing there.

Q - And what was her response?

A - She said she did not know what he was doing there and that it was none of her business.

Q - And what happened after that?

A - I asked if he had their permission to be there.

Q - And what response, if any, did Jeanne Schmid give to that question?

A - She said that he did not need her permission because he was an employee.

Q - Okay. And what happened after that was said to you?

A - She said in the future, you will not sit at the same table, you will not sit near Mark Smith.

Q - Okay. Did anything happen after that?

A - Well, the security guard kind of leaned in and said, am I going to have to babysit you two? (Tr. 411).

In a video recording of the incident Schmid (contrary to her testimony) openly tells Archer that he is “harassing” Smith. (Tr. 92–93). (GC Exh. 5). Smith thereafter moved to a different table. (Tr. 447).

5 The next day March 7, 2017, Desert Springs issued to employees a Bargaining Brief. The brief touted the raise that the nurses at Valley had received after Valley withdrew recognition. The bargaining brief contained the following language:

10 On February 19, 2017, Valley was presented with signed, valid cards providing objective and indisputable evidence that the union had lost majority support of the nurses at Valley. The cards' signatures were verified against HR documents containing signatures of the signees. Because the union lost Majority status, Valley was required by federal law to withdraw recognition since SEIU no longer represented a majority of the bargaining unit. This is the only avenue available to staff when a union blocks an election scheduled by the NLRB. Despite what SEIU posts on its webpage, the hospital did not block the election —the union did — the union was the one preventing Valley nurses from having their voices heard. (GC Exh. 4).

20 On that same day Smith returned to Desert Springs and set up a table near the entryway inside the main entrance. Archer also arrived and set up an information table. (Tr. 411). While Archer was setting up, employees stopped and spoke to him. At some point in time Archer noticed that Smith had a camera pointed in his direction and was recording him. He approached Smith and asked him to stop filming, advising him that he didn’t want to be filmed. (Tr. 412–
25 413). Smith responded with the comment “get over it” and in order to avoid a confrontation, Archer returned to where he was seated. (Tr. 413). Then Smith moved the camera and directed it again towards Archer. Later that evening Archer returned with Union Representative Barry Roberts who sat in stools in the main lobby engaging employees about the union during the shift change. Again, Smith began to film Archer and Roberts as they spoke to employees. (Tr. 384
30 414–415). Archer notified two security guards that Smith was filming them without their consent and after the security guards approached Smith he stopped recording. (Tr. 415).

35 The next day, March 8, 2017, Smith and Roberts both set up tables in the facility. Again, Smith filmed Roberts and employees who approached his table. Roberts moved to the cafeteria as did Smith and again Smith filmed him in the cafeteria as he spoke to employees. (Tr. 392).

a) Smith Was Vested With Apparent Authority to Solicit Support for Decertification

40 In addressing questions of agency, the common law rule traditionally applied by the Board is that of “apparent authority.” *Allegany Aggregates Inc.*, 311, 1165 (1993). The determination is whether under the circumstances, the employees would reasonably believe that the alleged agent was acting on behalf of management. *United Scrap Metal Inc.*, 344 NLRB 467 (2005). The principal must intend to cause the third person to believe the agent is authorized to
45 act on its behalf or should realize that its conduct is likely to create such a belief.

Applying this standard to the facts presented, I find that Smith was vested with, at the very least, apparent authority. There are numerous factors that support this conclusion. First Desert Springs expressly authorized Smith to solicit support for decertification in plain view in both the lobby and cafeteria. This is true despite its own written policies that prohibited solicitation by non-employees. Secondly, Desert Springs not only allowed Smith to solicit but also authorized this solicitation while dressed in a nurse's uniform wearing a hospital badge thereby bolstering the appearance of his legitimacy. High ranking management officials, including the Chief Nursing Officer, and the Director of Nursing openly authorized this solicitation in the cafeteria on March 6, 2017. Smith himself when specifically queried about his presence indicated he was "here for UHS." (Tr. 442-443). Smith was also given free meals while soliciting. All of these factors taken together establish that Desert Springs provided more than "ministerial aid" and would leave a reasonable employee to believe that Smith was acting on behalf of management. *Times Herald*, 253 NLRB 524 (1980). For its part, Desert Springs should have realized that its conduct was likely to create such a belief. Accordingly, the evidence supports a finding that Smith was acting as an agent of Desert Springs when he was soliciting support for the decertification effort. It is well settled, and I find that such conduct by Smith, Desert Springs's agent, taints the decertification effort and violates Section 8(a)(1) of the Act. See *Narricort Industries., L.P.* 353 NLRB 775 (2009).

b) Smith Engaged in Unlawful Surveillance

The Board has long held that absent proper justification photographing or video-taping employees engaged in protected concerted activities violates the Act because it has a tendency to intimidate. *Waco, Inc.* 273 NLRB 746 (1984). Typically, in order to justify such photography or video-taping, Respondent must be able to point to misconduct or some reasonable objective basis to anticipate misconduct. *F.W. Woolworth Co.*, 310 NLRB 1197(1993). The inquiry is whether the photographing has a reasonable tendency to interfere with protected activity under the circumstances. *Trailmobile Trailer, LLC* 343 NLRB 95 (2004).

There is no dispute that on at least three occasions, Smith video-taped union officials and employees who were speaking with union officials. The record is devoid of any reasonable objective evidence that the union officials who were engaging with employees were engaging in misconduct or that Smith had any reasonable objective basis to anticipate misconduct. Smith's testimony that he subjectively felt "harassed" is insufficient to provide such justification as purely subjective belief is insufficient. *Kingsbridge Heights*, 352 NLRB 6 (2008). Rather the standard requires some reasonable objective basis which in this case is completely lacking. I find that photographing of employees and union officials by Smith, who had been clothed with apparent authority to act on behalf of management, had a reasonable tendency to interfere with protected activity and therefore violated Section 8(a)(1) of the Act.

c) Security Guard Castro Did Not Give the Impression of Surveillance

The test for determining whether an employer unlawfully creates an impression of surveillance is whether under the circumstances, the employee reasonably could conclude from the statement in question that his or her protected activities are being monitored. *Mountaineer Steel, Inc.*, 326 NLRB 787 (1998), enfd. 8 Fed.Appx. 180 (4th Cir. 2001), see also, *Frontier Telephone of Rochester, Inc.*, 344 NLRB 1270, 1276 (2005). The Board's view is that an

employer “creates the impression of surveillance when it monitors employees’ protected concerted activity in a manner that is “out of the ordinary” even if the activity is conducted openly noting that, “employees should not have to fear that “members of management are peering over their shoulders” taking note of their concerted activities. *Conley Trucking*, 349 NLRB 308 (2007).

The General Counsel’s assertions regarding this claim revolve around the statement made by Castro inquiring whether he had to “babysit” both Smith and Archer. I disagree with General Counsel that the statement in and of itself would cause a reasonable employee to conclude that the security guard “intended to monitor employees protected activities.” (GC Br. at 60). Rather, the statement addressed to both the agent of Desert Springs and the union official appeared to be merely a colloquial call for them to conduct themselves in a respectful manner. Accordingly, this allegation is dismissed.

11. Desert Springs RN Unit Withdrawal of Recognition

In early March 2017, in a similar course of events, the process of decertification began for the Desert Springs RN unit. As was the case with Valley Courtney Farese, a nurse at Desert Springs, set up an account for Desert Springs using the same Typeform.com website. (Tr. 861, 864). She publicized the online petition on a Facebook page, and distributed fliers with a link to the Facebook page and a QR scanner code that linked directly to the online petition. (Tr. 861, 862). This time she had the emails sent to her personal email address, courtneyfarese@gmail.com. (Tr. 861). As with the Valley online forms, there was no form of electronic signature or other security feature to ensure that the person filling out the form was in fact the person whose name appeared on the form. Nor did Farese have any personal familiarity with any of the individual email addresses listed on the emails she received from the online petitions. (Tr. 865, 875).

On March 12, 2017, Farese and two other employees presented McNutt a folder which contained decertification cards, and emails and a 4-page petition. (Resp. Exh. 33, 35, GC Exh. 7). McNutt and Schmidt alphabetized the materials and culled out duplicates. (Tr. 208, 214). McNutt and Schmidt thereafter contacted Keim who met in a hospital conference room. Keim used a March 9, 2017 employee roster and used a yellow highlighter to mark which signatures needed to be compared to personnel files. (Resp. Exh. 38). Two employees assisted with signature review, Michele Crawford, Director of Business Development and Kent Forsythe, Director of Biomedical Engineering. (Tr. 940). Each took one half of the alphabet and compared cards to signatures from employees’ personnel files. Crawford verified 62 cards and Forsythe 84. Forsythe set aside four cards which he could not verify. (Tr. 964, 968). Keim reviewed the cards and included them in the count. (Tr. 964, 967, 972). Keim reviewed the email submissions and used the same process to verify that he used for Valley counting submissions if the phone number or email address on the form matched hospital records. (Tr. 1092). Keim found three names that were not on the roster he was using and inquired of McNutt. McNutt verified the employment status of the employees. (Tr. 1070–1071). After completing the count, later that same day, March 12, 2017, Desert Springs notified the union and employees that it was withdrawing recognition of the Union. (GC Exh. 27).

a) Desert Springs Relied Upon Electronic Submissions That Did Not Establish Evidence of Actual Loss of Majority Support by a Preponderance of the Evidence.

As I previously found regarding Valley's counting of emails, applying the same reasoning and rationale set forth above, I find Desert Springs failed to meet its burden to show actual loss of majority in its RN Unit.⁸ In view of Respondent's failure to meet its burden regarding withdrawal of recognition, I find that Respondent violated Section (8)(a)(5) and (1) of the Act.

b) Desert Springs Relied on RN Signatures Which Could Not Within a Reasonable Degree of Certainty be Authenticated

The General Counsel challenged 31 of the signatures that Respondent Desert Springs relied upon in support of its withdrawal of recognition. (GC Br. at 71–72). I have carefully reviewed the signatures and compared the cards submitted to the signatures that appear in Respondent's personnel records. (Resp. Exhs. 35 and 44). I agree in part with the General Counsel that some cards could not with any reasonable degree of certainty be determined to be genuine or authentic because of the variation between the signature on the card and that found in the personnel records. However, unlike the General Counsel, I do not find all 31 cards met this criteria. I find only the following cards fell into this category: Hollie Cato, Brandon Dabu, Elizabeth Santos, Matthew Gibson, Jennifer Labre-Go, Maria Lazo, Johnell Maralit, Jibran Miller, Benjamin Ritchie, Kelley Tuminaro, Kevin Virtusion, Julie Walton, Paola Watson. Resp. Exh. 35. 2, 20, 21, 33, 46, 49, 54, 57, 66, 69, 80, 82, 83 and 84). Accordingly, these 14 cards should not be counted for purposes of showing actual loss of majority.

12. Desert Springs Implements RN Wage Increase

On March 14, 2107, Desert Springs sent a letter similar to that which it had sent to Valley nurses advising of a wage increase. (GC Exh. 9). The increase was effective March 19, 2017, and employees met with their supervisors to discuss the amount of their raises. (GC Exh. 33).

a) Unilateral Changes to Wages

As previously noted, unilateral modification of wages or other mandatory subjects of bargaining can be a per se violation of Section 8(a)(5). In view of the fact that I have found that Desert Springs' withdrawal of recognition was unlawful, it was not privileged to take unilateral action regarding wages and in doing so violated Section 8(a)(5) of the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016) enfd. 871 F.3d. 811, 825 fn. 4 (2017), see also *Narricort Industries, L.P.*, 353 NLRB 775, 776 fn. 11(2009).

⁸ Using Respondent's own figures once the emails are subtracted (even assuming for the sake of argument that all other cards were valid) the count falls below the 220 needed to establish loss of majority.

13. Desert Springs Withdrawal of Recognition of the Desert Springs Technical Unit

On March 18, 2017, in a similar manner as had previously transpired with Desert Springs, RNs Farese and Respiratory Therapist Andrea Ormonata met with McNutt and presented her with 42 signed decertification cards and 10 Typeform.com email notifications. (Resp. Exh. 34, 36). Again, the materials were sorted and duplicates were set aside by McNutt. Keim compared the emails to a list generated on December 30, 2016 and counted emails if the phone number or email matched. (Tr. 1030, 1060). Keim identified one name that wasn't on his list and as had been done previously, a call was placed to verify the employment status of the individual. (Tr. 1061). The signatures were verified by Jim Tran, Director of Pharmacy and Crawford. After the count was completed later that same day, Desert Springs withdrew recognition from the technical bargaining unit. (GC Exh. 28).

a) Desert Springs Relied Upon Electronic Submissions That Did Not Establish Evidence of Actual Loss of Majority Support by a Preponderance of the Evidence.

As I previously found regarding Valley's counting of emails, applying the same reasoning and rationale set forth above, I find Desert Springs failed to meet its burden to show actual loss of majority in its Technical Unit.⁹ In view of Respondent's failure to meet its burden regarding withdrawal of recognition, I find that Respondent violated Section (8)(a)(5) and (1) of the Act.

b) Desert Springs Relied on One Tech Signature Which Could Not Within a Reasonable Degree of Certainty be Authenticated

The General Counsel challenged three of the signatures that Respondent Valley relied upon in support of its withdrawal of recognition. (GC Br. at 72). I have carefully reviewed the signatures and compared the cards submitted to the signatures that appear in Respondent's personnel records. (Resp. Exhs. 36 and 45). I agree in part with the General Counsel that one card, that of Kurtis Groseclose, could not with any reasonable degree of certainty be determined to be genuine or authentic because of the variation between the signature on the card and that found in the personnel records. Accordingly, this card should not be counted for purposes of showing actual loss of majority.

14. Desert Springs Implements Technical Unit Wage Increase

In much the same fashion as had been done with the RNs, Desert Springs announced and implemented a wage increase retroactive to March 19, 2017. (GC Exh. 10).

a) Unilateral Changes to Wages

Unilateral modification of wages or other mandatory subjects of bargaining can be a per se violation of Section 8(a)(5). In view of the fact that I have found that the Desert Spring's withdrawal of recognition for the technical unit was also unlawful, it was not privileged to take

⁹ Using Respondent's own figures once the emails are subtracted (even assuming for the sake of argument that all other cards were valid) the count falls below the 48 needed to establish loss of majority.

unilateral action regarding wages and in doing so violated Section 8(a)(5) of the Act. See *Southern Bakeries, LLC*, 364 NLRB No. 64 (2016) enfd. 871 F.3d 811, 825 fn. 4 (2017), see also *Narricort Industries, L.P.*, 353 NLRB 775, 776 fn. 11 (2009).

15. Respondent's Unfair Labor Practices Caused Disaffection.

It is established law that "an employer may not withdraw recognition from a union while there are unremedied unfair labor practices tending to cause employees to become disaffected from the union." *Broadway Volkswagen*, 342 NLRB 1244, 1247 (2004) (citations omitted). In determining whether a causal relationship exists between the unremedied unfair labor practices and the loss of union support, the Board considers the following factors: (1) the length of time between the unfair labor practices and the withdrawal of recognition; (2) the nature of the violations, including the possibility of a detrimental or lasting effect on employees; (3) the tendency of the violation to cause employees disaffection; and (4) the effect of the unlawful conduct on employees' morale, organizational activities, and membership in the union. *Master Slack Corp.*, 271 NLRB 78, 84 (1984). See also, *Beverly Health & Rehab Services*, 346 NLRB 1319 (2006).

a) Valley Withdrawal

Applying these factors here, I conclude that the Respondent's violations of the Act which took place close in time to the withdrawal of recognition including its efforts to censor union messaging, attempts to thwart union access to its facility, ceasing dues deductions, refusing to provide bargaining unit contact information at a critical time when decertification efforts were underway, its unlawful captive audience meeting with Komeda and others, which if taken together would, when viewed objectively, tend to have a significant effect on employee morale and organizational activities and tend cause employee disaffection. See *Kentucky Fried Chicken*, 341 NLRB 69 (2004) (blaming union for lack of wage increase caused disaffection), *Bakeries LLC*, 364 NLRB No. 64 enfd. 871 F.3d 827 (8th Cir. 2017) (interference with union access caused disaffection), *Scott Bros. Dairy*, 332 NLRB 1542 (2000) (statements about the futility of bargaining caused disaffection), *Wire Products Mfg. Corp.*, 326 NLRB 625 (1998). (restricting union materials caused disaffection), *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015) (ceasing dues deduction).

b) Desert Springs RN and Technical Unit Withdrawal

Applying the *Master Slack* factors, I conclude that the Respondent's violation of the Act by ceasing dues deduction, censoring union communications, disrupting union employee contacts, and relying on Valley's unlawful withdrawal and unlawful wage increase to promise wage increases if the union was decertified. I find that the legion of unfair labor practices, discussed above, which all took place close in time to the withdrawal of recognition would, when viewed objectively taken together, tend to cause employee disaffection, and would adversely affect organizational activities and membership in the union. See *Lincoln Lutheran of Racine*, 362 NLRB 1655 (2015).

CONCLUSIONS OF LAW

The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

1. The Respondents violated Section 8(a)(5) of the Act by unilaterally ceasing dues deductions.
2. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by confiscating union literature.
3. The Respondents violated Section 8(a)(1) of the Act by requiring “pre-approval” to post union materials.
4. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by unlawfully restricting union access to bargaining unit members.
5. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by thwarting the union’s contractual right to address new employees.
6. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by imposing unilateral changes regarding when union representatives could speak with unit members.
7. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by imposing unilateral changes regarding when union representatives could speak with unit members.
8. The Respondent Valley violated Section 8(a)(1) the Act by unlawfully promising a wage increase only if employees got rid of the union.
9. The Respondent Valley violated Section 8(a)(1) of the Act by conveying to employees the futility of union representation.
10. The Respondent Valley violated Section 8(a)(1) of the Act by conveying to employees by promising better future conditions if employees got rid of the union.
11. The Respondent Valley violated Section 8(a)(5) and (1) of the Act by unlawfully withdrawing recognition of the union.
12. The Respondent Valley violated Section 8(a)(5) of the Act by unlawfully taking unilateral action regarding wages.
13. The Respondent Desert Springs violated Section 8(a)(1) of the Act by surveilling union officials and employees.

14. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the RN unit.

15. The Respondent Desert Springs violated Section 8(a)(5) of the Act by unlawfully taking unilateral action regarding wages regarding the RN unit.

16. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by withdrawing recognition of the Technical Unit.

17. The Respondent Desert Springs violated Section 8(a)(5) of the Act by unlawfully taking unilateral action regarding wages regarding the Technical Unit.

18. The Respondent Desert Springs violated Section 8(a)(1) by directly soliciting decertification through Smith.

19. The Respondent Desert Springs violated Section 8(a)(5) and (1) of the Act by unlawfully causing disaffection.

REMEDY

Having found Respondents have engaged in certain unfair labor practices, I find Respondents must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

- a) Respondent Valley shall cease its interference with the Union's access to the employees it represents at Valley as permitted by the terms of its expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with more than two employees at a time or denying the Union access to new employees at our orientation programs.
- b) Respondent Valley shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.
- c) Respondent Valley shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.
- d) Respondent Valley shall cease casting blame upon the Union for the withholding of benefits, such as wage increases, from employees.
- e) Respondent Valley shall cease suggesting to employees that they should decertify the Union as their collective-bargaining representative.
- f) Respondent Valley shall cease granting benefits, such as wage increases, to undermine employee support for the Union.
- g) Respondent Valley shall not refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Valley RN Unit):
- h) All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the National Labor Relations Act (the Act).

- 5 i) Respondent Valley shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Valley RN Unit, including by changing rules or practices related to Union access to the facilities and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.
- 10 j) Respondent Valley shall not refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the Valley RN Unit.
- 15 k) Respondent Valley shall cease engaging in conduct that undermines the Union's status as the collective-bargaining representative of the Valley RN Unit.
- l) Respondent Valley shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused by our unfair labor practices.
- 20 m) Respondent Valley shall cease threatening employees with withholding benefits if the employees support the Union or promise to grant you benefits if you do not support the Union.
- n) Respondent shall not in any manner interfere with employee rights under Section 7 of the Act.
- 25 o) Respondent shall, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees.
- p) Respondent Valley shall upon request of the Union, rescind the changes made to the wages, hours, and other terms and conditions of employment for the employees in the Valley RN Unit, including changes made to rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, failing to remit to the Union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union.
- 30 q) Respondent Valley shall provide the Union the following information it requested on January 31, 2017: Employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.
- 35 r) Respondent Valley shall reimburse the Union, with interest, at no expense, for all dues that it failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check off authorizations.
- 40 s) Respondent Desert Springs shall cease removing union literature from bulletin boards maintained by Service Employees International Union, Local 1107 (the Union) at our facility.
- 45 t) Respondent Desert Springs shall cease confiscating union literature from employee break rooms in the presence of employees.

- u) Respondent Desert Springs shall not interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with employees it represents in the presence of unrepresented employees.
- 5 v) Respondent Desert Springs shall not prohibit employees who support the Union from being near other people soliciting in opposition to the Union.
- w) Respondent Desert Springs shall not engage in surveillance of union officials or employees including by recording employees speaking with union representatives.
- 10 x) Respondent Desert Springs shall cease providing assistance to employees in soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.
- y) Respondent Desert Springs shall cease soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.
- 15 z) Respondent Desert Springs shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.
- aa) Respondent Desert Springs shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.
- 20 bb) Respondent Desert Springs shall cease granting employees benefits, such as wage increases, to undermine your support for the Union.
- cc) Respondent Desert Springs shall cease its refusal to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Desert Springs RN Unit): All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the National Labor Relations Act the Act).
- 25 dd) Respondent Desert Springs shall cease refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Desert Springs Technical Unit):
- 30 All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.
- ee) Respondent Desert Springs shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Desert Springs RN Unit or the Desert Springs Technical Unit, including by changing rules and practices related to the posting of materials on the Union's bulletin boards at our facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.
- 35 ff) Respondent Desert Springs shall cease engaging in conduct undermining the Union's status as the collective-bargaining representative of the Desert Springs RN Unit and the Desert Springs Technical Unit.
- 45

- gg) Respondent Desert Springs shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the employees in the Desert Springs RN Unit or the employees in the Desert Springs Technical Unit and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused or directly tainted by our unfair labor practices.
- hh) Respondent Desert Springs shall not in any manner interfere with employee rights under Section 7 of the Act.
- ii) Respondent Desert Springs shall upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit.
- jj) Each Respondent will be ordered to post an appropriate notice.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁰

ORDER

The Respondents, Valley Health System LLC, d/b/a Desert Springs Hospital Medical Center and Valley Hospital Medical Center, Inc., d/b/a Valley Hospital Medical Center Las Vegas, Nevada, its officers, agents, successors, and assigns, shall

1. Cease and desist from engaging in the following conduct

- a) Respondent Valley shall cease its interference with the Union's access to the employees it represents at Valley as permitted by the terms of its expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with more than two employees at a time or denying the Union access to new employees at our orientation programs.
- b) Respondent Valley shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.
- c) Respondent Valley shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.
- d) Respondent Valley shall cease casting blame upon the Union for the withholding of benefits, such as wage increases, from employees.
- e) Respondent Valley shall cease suggesting to employees that they should decertify the Union as their collective-bargaining representative.
- f) Respondent Valley shall cease granting benefits, such as wage increases, to undermine employee support for the Union.
- g) Respondent Valley shall not refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following

¹⁰ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

appropriate unit (the Valley RN Unit): All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the National Labor Relations Act (the Act).

h) Respondent Valley shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Valley RN Unit, including by changing rules or practices related to union access to the facilities and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

i) Respondent Valley shall not refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the Valley RN Unit.

j) Respondent Valley shall cease engaging in conduct that undermines the Union's status as the collective-bargaining representative of the Valley RN Unit.

k) Respondent Valley shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused by our unfair labor practices.

l) Respondent Valley shall cease threatening employees with withholding benefits if the employees support the Union or promise to grant you benefits if you do not support the Union.

m) Respondent shall not in any manner interfere with employee rights under Section 7 of the Act.

n) Respondent shall, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees.

o) Respondent Valley shall upon request of the Union, rescind the changes made to the wages, hours, and other terms and conditions of employment for the employees in the Valley RN Unit, including changes made to rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, failing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union.

p) Respondent Valley shall provide the Union the following information it requested on January 31, 2017: Employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

q) Respondent Valley shall reimburse the Union, with interest, at no expense, for all dues that it failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check off authorizations.

r) Respondent Desert Springs shall cease removing union literature from bulletin boards maintained by Service Employees International Union, Local 1107 (the Union) at our facility.

s) Respondent Desert Springs shall cease confiscating union literature from employee break rooms in the presence of employees.

t) Respondent Desert Springs shall not interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with employees it represents in the presence of unrepresented employees.

u) Respondent Desert Springs shall not prohibit employees who support the Union from being near other people soliciting in opposition to the Union.

v) Respondent Desert Springs shall not engage in surveillance of union officials or employees including by recording employees speaking with union representatives.

w) Respondent Desert Springs shall cease providing assistance to employees in soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

x) Respondent Desert Springs shall cease soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

y) Respondent Desert Springs shall cease promising employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

z) Respondent Desert Springs shall cease threatening to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

aa) Respondent Desert Springs shall cease granting employees benefits, such as wage increases, to undermine your support for the Union.

bb) Respondent Desert Springs shall cease its refusal to bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the following appropriate unit (the Desert Springs RN Unit): All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the National Labor Relations Act the Act).

cc) Respondent Desert Springs shall cease refusing to bargain in good faith with the Union as the exclusive collective-bargaining representative of its employees in the following appropriate unit (the Desert Springs Technical Unit):

All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

dd) Respondent Desert Springs shall cease making changes to the wages, hours, and other terms and conditions of employment of employees in the Desert Springs RN Unit or the Desert Springs Technical Unit, including by changing rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to Union access to its facilities, promulgating new rules related to employee conduct or activities, and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements.

ee) Respondent Desert Springs shall cease engaging in conduct undermining the Union's status as the collective-bargaining representative of the Desert Springs RN Unit and the Desert Springs Technical Unit.

ff) Respondent Desert Springs shall not withdraw recognition from the Union as the exclusive collective-bargaining representative of the employees in the Desert Springs RN Unit or the employees in the Desert Springs Technical Unit and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused or directly tainted by our unfair labor practices.

gg) Respondent Desert Springs shall not in any manner interfere with employee rights under Section 7 of the Act.

hh) Respondent Desert Springs shall, upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit.

(ii) Within 14 days after service by the Region, post at its facilities in Las Vegas, NV copies of the attached notices marked "Appendix."¹¹ Copies of the notice, on forms provided by the Regional Director after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since September 23, 2016.

Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. September 28, 2018


Dickie Montemayor
Administrative Law Judge

¹¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

**APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with more than two employees at a time or denying the Union access to new employees at our orientation programs.

WE WILL NOT promise employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

WE WILL NOT threaten to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

WE WILL NOT blame the Union for our withholding of benefits, such as wage increases, from employees.

WE WILL NOT suggest to employees that they should decertify the Union as their collective-bargaining representative.

WE WILL NOT grant you benefits, such as wage increases, to undermine your support for the Union.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Valley RN Unit):

All Registered Nurses (RNs) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the National Labor Relations Act (the Act).

WE WILL NOT make changes to the wages, hours, and other terms and conditions of employment of employees in the Valley RN Unit, including by changing rules or practices related to union access to our facilities and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for a collective-bargaining agreement.

WE WILL NOT refuse to provide the Union with information that is relevant and necessary to its role as the collective-bargaining representative of the Valley RN Unit.

WE WILL NOT engage in conduct undermining the Union's status as the collective-bargaining representative of the Valley RN Unit.

WE WILL NOT withdraw recognition from the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support that was caused by our unfair labor practices.

WE WILL NOT threaten you with withholding benefits if you support the Union or promise to grant you benefits if you do not support the Union.

WE WILL NOT in any manner interfere with your rights under Section 7 of the Act.

WE WILL, upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of the Valley RN Unit employees.

WE WILL, upon request of the Union, rescind the changes we made to the wages, hours, and other terms and conditions of employment for the employees in the Valley RN Unit, including changes we made to rules and practices related to the posting of materials on the Union's bulletin boards at its facilities, changing rules or practices related to union access to its facilities, promulgating new rules related to employee conduct or activities, failing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check off authorizations, and changing employees' rates of pay, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union.

WE WILL provide the Union the following information it requested on January 31, 2017:

Employee job classification, name, address, telephone number(s), email or other electronic address, and department where employee works.

WE WILL reimburse the Union, with interest, at no expense to you, for all dues that we failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check off authorizations.

**VALLEY HOSPITAL MEDICAL CENTER, INC.,
D/B/A VALLEY HOSPITAL MEDICAL CENTER**

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099
(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

The Administrative Law Judge's decision can be found at www.nlr.gov/case/28-CA-184993 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (602) 416-4755.

**APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
AN AGENCY OF THE UNITED STATES GOVERNMENT**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

- Form, join or assist a union
- Choose representatives to bargain with us on your behalf
- Act together with other employees for your benefit and protection
- Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT remove union literature from bulletin boards maintained by Service Employees International Union, Local 1107 (the Union) at our facility.

WE WILL NOT confiscate union literature from employee break rooms in the presence of employees.

WE WILL NOT interfere with the Union's access to the employees it represents at our facility, as permitted by the terms of our expired collective-bargaining agreements with the Union, including by prohibiting the Union from talking with employees it represents in the presence of unrepresented employees.

WE WILL NOT prohibit employees who support the Union from being near other people soliciting in opposition to the Union.

WE WILL NOT watch out for or make it appear that we are watching out for your or other employees' union activity, including by recording employees speaking with union representatives.

WE WILL NOT provide assistance to employees in soliciting employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

WE WILL NOT solicit employees to sign cards or a petition seeking to remove the Union as their collective-bargaining representative.

WE WILL NOT promise employees benefits, such as wage increases, if they remove the Union as their collective-bargaining representative.

WE WILL NOT threaten to withhold benefits, such as wage increases, from employees, if they do not remove the Union as their collective-bargaining representative.

WE WILL NOT grant employees benefits, such as wage increases, to undermine your support for the Union.

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Desert Springs RN Unit):

All Registered Nurses employed by the hospital, including all relief charge nurses, but excluding all other employees, guards and supervisors, including all charge nurses, as defined in the National Labor Relations Act the Act).

WE WILL NOT refuse to bargain in good faith with the Union as the exclusive collective-bargaining representative of our employees in the following appropriate unit (the Desert Springs Technical Unit)

All technicians and Licensed Practical Nurses (LPN) employed by the hospital, but excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT make changes to the wages, hours, and other terms and conditions of employment of employees in the Desert Springs RN Unit or the Desert Springs Technical Unit, including by changing rules and practices related to the posting of materials on the Union's bulletin boards at our facilities, changing rules or practices related to union access to our facilities, promulgating new rules related to employee conduct or activities, and ceasing to remit to the union dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations, without prior notice to the Union and without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good- faith impasse for successor collective-bargaining agreements.

WE WILL NOT engage in conduct undermining the Union's status as the collective-bargaining representative of the Desert Springs RN Unit and the Desert Springs Technical Unit.

WE WILL NOT withdraw recognition from the Union as the exclusive collective-bargaining representative of the employees in the Desert Springs RN Unit or the employees in the Desert Springs Technical Unit and thereafter fail and refuse to recognize the Union as the exclusive collective-bargaining representative of those unit employees, in the absence of a Board-conducted election, in the absence of a showing that the Union has lost majority support, or based on evidence of loss of majority support

that was caused or directly tainted by our unfair labor practices.

WE WILL NOT in any manner interfere with your rights under Section 7 of the Act.

WE WILL, upon request of the Union, bargain in good faith with the Union as the exclusive collective-bargaining representative of employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit.

WE WILL , upon request of the Union, rescind the changes we made to the wages, hours, and other terms and conditions of employment for employees in the Desert Springs RN Unit and the employees in the Desert Springs Technical Unit without affording the Union an opportunity to bargain with respect to this conduct and the effects of this conduct and without first bargaining with the Union to an overall good-faith impasse for successor collective-bargaining agreements, including: changes we made to rules and practices related to the posting of materials on the Union's bulletin boards at our facilities, changes to rules or practices related to union access to our facilities, promulgation of new rules related to employee conduct or activities, and cessation of remission to the Union of dues deducted pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations.

WE WILL reimburse the Union, with interest, at no expense to you, for all dues that we failed to deduct and remit pursuant to valid, unexpired, and unrevoked employee dues check-off authorizations.

**VALLEY HEALTH SYSTEM LLC, D/B/A
DESERT SPRINGS HOSPITAL MEDICAL
CENTER**

(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

2600 North Central Avenue, Suite 1400, Phoenix, AZ 85004-3099

(602) 640-2160, Hours: 8:15 a.m. to 4:45 p.m.

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